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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 669

THE UNITED STATES OF AMERICA, PETITIONER

v.

LEIB RITTERMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 77) is reported in 12 F. (2d) 849.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 10, 1926. (R. 83.) A petition for rehearing was filed and entertained, and was denied by the Circuit Court of Appeals July 6, 1926. (R. 83.) Petition for writ of certiorari was filed October 4, 1926, and the writ was allowed November 23, 1926. (R. 85.) The jurisdiction of this Court is based on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

THE QUESTION

The question presented in this case is when is the crime of smuggling consummated under Section 593 (a) of the Tariff Act of 1922, and whether one traveling by rail, who clandestinely introduces dutiable articles into the United States with intent to evade the payment of duty, and who by false statements to customs officers stationed abroad procures the passage of dutiable merchandise across the international boundary line into the United States as nondutiable baggage, under a practice which requires no further examination in the United States, and who repeatedly asserts to customs officials at the port of entry that he has no dutiable merchandise to declare, may escape conviction on the ground that he has not completed the offense, because the dutiable articles are discovered at the customhouse during a search of his person and baggage.

THE STATUTE

Sec. 593(a) Tariff Act of 1922 (c. 356, 42 Stat. 858, 982):

> SEC. 593. *Smuggling and clandestine importations.*—(a) If any person knowingly and willfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces, into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice,

every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

STATEMENT

The respondent, Leib Ritterman, was indicted and convicted in the United States District Court for the District of Vermont for violation of Section 593(a) of the Tariff Act of 1922, which provides punishment for the smuggling or clandestine introduction into the United States of any merchandise which should have been invoiced, with intent to defraud the revenues of the United States. On writ of error the Circuit Court of Appeals reversed the judgment of the District Court on the ground that the offense had not been consummated.

On the 28th day of January, 1926, at 8.15 P. M., Ritterman boarded at Montreal, Canada, the Central Vermont Railway train known as the Washingtonian, bound for New York by way of St. Albans, Vermont. Before boarding the train Ritterman checked to New York as his personal baggage a Gladstone bag, which contained some of his personal effects and in which, as it afterwards developed, he had secreted in the toes of socks, in a talcum powder box and in a collar box (R. 25, 30) uncut diamonds of the value of $102,077.03 (R. 51).

For the accommodation of travelers proceeding from Canada into the United States, United States

customs officers are stationed at Montreal for the purpose of there examining personal baggage, to be checked as such to points within the United States. If the baggage is found to contain no unexempted dutiable articles it is corded and sealed by the customs officer at Montreal, who attaches to it a special manifest showing that there is no duty to be paid, and, under ordinary circumstances, if no suspicions are aroused, the customs officer who boards the train after it crosses the international boundary cuts the cord and seal and removes the manifest, and the baggage is thereupon free to go to destination and be delivered to the traveler.

Articles 224 of the Customs Regulations of 1923, dealing with this subject, is as follows:

> *Baggage examined abroad.—Disposition at first port of arrival.*—Baggage examined by inspectors of the United States customs stationed at places in the Dominion of Canada, if containing no dutiable merchandise, will be corded, sealed, and forwarded under special manifest as herein provided, or placed in a sealed car or compartment and accompanied by a sheet manifest.
>
> Dutiable articles and exemptions allowed, if any, will be indorsed on the manifests by examining inspectors for the information of the collector at the first port of arrival in the United States.
>
> The special manifest herein provided must be furnished by the transportation com-

panies, and shall be made on white cardboard, not less than 2½ by 4½ inches, in the following form:

SPECIAL MANIFEST OF BAGGAGE

Check No.——

This baggage is in transit from——(foreign country) to——, in the United States.

I certify that this baggage was duly corded and sealed by me; that the packages have been carefully examined, passed, and laden under my personal supervision; and that there are no dutiable goods of any kind contained therein nor exemptions allowed, except as noted hereon.

Dutiable goods, ———.

Exemptions allowed, ———.

———— ————,

United States Inspector of Customs.

The card manifests will be placed on the cords back of the seal. When the inspector boards a train at the first port of arrival of the baggage, he will cut the cord and retain the manifest for filing in his office.

If the baggage is to reenter foreign contiguous territory before it reaches its final destination in the United States, the cord will be cut by the inspector at the last port of arrival.

The sealing officer may keep a book record of baggage for reference.

The special manifest may show dutiable goods, but the regulation contemplates that the exemptions allowed may be as much as the dutiable articles. If

the amount of dutiable goods exceeds the exemptions, the sheet manifest is used and the baggage is reexamined and the duty collected at the first port of entry.

Section 461 of the Tariff Act of 1922 provides:

> All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of, and be inspected by a customs officer at the first port of entry at which the same shall arrive.

This section, authorizing the Secretary to provide by regulation for inspection at a place other than the first port of entry, is the authority for regulation 224 above set forth, which, for the convenience of travelers, allows inspection of baggage at places in the Dominion of Canada merely for the purpose of determining that there are no dutiable articles in it. Similar authority is found in Section 498 of the Tariff Act of 1922, which provides:

> The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of * * *
>
> (6) Articles carried on the person or contained in the baggage of a person arriving in the United States * * *.

Article 205 of the regulations provides:

> All merchandise and baggage imported or brought into the United States from contiguous foreign territory, unless destined to

> an interior port in bond, shall be unladen in the presence of and inspected by a customs officer at the first port of entry at which same shall arrive. * * *
>
> Declaration on Customs Form 6063 will be required for articles acquired abroad exceeding $25 in value.

By Treasury Decision 40803, issued April 11, 1925, article 205 of the regulations was amended to provide that the declaration should be on form 6059. A copy of this form is set out in the appendix to this brief. It calls for a description of articles obtained abroad, the price paid and description of the trunks or bags. Attention is called to the statement at the bottom of the form, which reads: "This form may be used as a pro forma invoice and manifest when necessary." There are some other sections of the statute and regulations which have no direct bearing here and need not be set forth at length. Section 484 of the Tariff Act requires the entry of all merchandise and the production of a certified invoice. Regulation 260 provides for production of a certified invoice, with provisions for waiving the certified invoice by the collector. Article 247 of the regulations, requiring the production of invoices certified by a consular officer, waives the requirement for a consular invoice in the case of "articles carried on the person or contained in the baggage of a person arriving in the United States." In the case of personal effects the customs form of declaration 6059 set forth in the appendix is, as

shown thereon, accepted as "a pro forma invoice." The uncut diamonds involved in this case were not personal effects and should have been accompanied by a certified invoice or at least should have been invoiced "pro forma" by the use of customs form 6059.

Before his bag was checked, Ritterman, according to these regulations, submitted it to the United States customs inspector at Montreal for examination, then declaring, in response to questions by the inspector, that it contained only his personal wearing apparel. The inspector examined the bag, evidently in a superficial way, and corded and sealed it and attached to it a special manifest, as provided by Article 224 of the Customs Regulations, and the baggage check was delivered to Ritterman. (R. 11, 12, 13.) In the absence of suspicions by the customs officers, which might result in further examination, and under ordinary circumstances, this would have resulted in the baggage containing the diamonds entering the United States without further inspection or declaration and without the payment of duty. Ritterman carried other personal baggage with him when he boarded the train for New York City. (R. 16, 17.)

On the train, both before and after crossing the international boundary, the United States customs officers asked him if he had any dutiable merchandise to declare, and he replied in the negative. (R. 17, 20.) On reaching St. Albans, Vt., the first port

of entry, he was asked to leave the train (R. 18) and go to the customs office, which he did. The Gladstone bag was also removed from the train by the customs officers and taken to the customs office (R. 24), but it does not appear Ritterman knew that until later asked for the key. Ritterman was taken into one room, where he was examined by some officials, and the Gladstone bag was taken into another room in the customs office, where it was examined by other officials. Upon arrival at the customs house at St. Albans he was asked if he had anything to declare. He said, "No, sir." He was asked the second time, "Are you sure you have nothing to declare?" and he said, "I have nothing to declare." The third question was, "Have you any diamonds to declare?" He said, "No, sir." (R. 42, 46.) He was then turned over to another customs official, who asked him if he had in his baggage or on his person any articles intended for any other person or for sale or that he had purchased on commission for others that he had not declared to the collector, and he answered in the negative. He was then told that the reason he was asked about diamonds was that the customs officer had information to the effect that he had a quantity of diamonds in his possession that day at Montreal, and he replied: "I did; I placed those diamonds in the safety-deposit box of the Bank of Nova Scotia in Montreal." (R. 46.) He was then told that it would be necessary for the officials to examine his

person, and he was told to remove some of his clothing.

At that point the customs officer coming in from the other room where Ritterman's baggage was being examined asked Ritterman for the key to his baggage, which he surrendered. (R. 46.) The officer who took the key went back where the baggage was, immediately opened the bag and discovered the concealed diamonds. (R. 48.) Meanwhile, the examination of Ritterman's person proceeded. Some three, four, or five minutes after he had surrendered the key, and after he had continued disrobing for that length of time, Ritterman told one of the officers examining him that he wanted to speak to him privately, and then he said that the diamonds were in his baggage. (R. 48.) There is no evidence that the discovery of the diamonds in his bag resulted from his confession. The jury would have been justified in finding that the officers examining the bag discovered the diamonds before Ritterman confessed they were there. At best, from Ritterman's standpoint, the discovery of the diamonds was practically simultaneous with his confession, but not the result of it.

At the trial the Court charged the jury as follows:

> If you find that the defendant falsely and fraudulently, intending to defraud the revenue of the United States, told Collector Whitehill and Assistant Collector Walsh at the Customs House that he did not have any diamonds to declare, this completed the

offense of smuggling, notwithstanding that later, while his person was being searched by Assistant Collector Walsh at the Customs House, he admitted that he had some diamonds in his Gladstone bag. (R. 67.)

If the defendant intended to smuggle the merchandise in question, he had an opportunity to change his mind up to the time when the obligation to pay or account for duties arose, and if you believe that the defendant did so change his mind and did so declare then it is your duty to find him not guilty.

If you find as a fact that the defendant had no opportunity to declare the Gladstone bag because it was seized or taken from him, and that his first opportunity to declare the diamonds came at the time when he was asked for the key and before his examination was completed; if you believe that he then availed himself of this opportunity then your verdict should be not guilty. (R. 68.)

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in reversing the judgment of the District Court and in holding that the defendant was not guilty of smuggling under Section 593(a) of the Tariff Act of 1922.

SUMMARY OF ARGUMENT

The crime of smuggling as defined by Section 593(a) of the Tariff Act of 1922 is consummated if dutiable merchandise is clandestinely brought into the United States concealed in the owner's

baggage after the owner has fraudulently procured a waiver of inspection in the United States by false statements to a customs officer stationed abroad, at least where the waiver of inspection in the United States is rescinded and the owner after arrival at the first port of entry and being called on to declare dutiable articles fraudulently fails to do so. In any view of this case the defendant consummated the crime when on reaching the first port of entry he failed and refused to declare the dutiable articles. The fact that his crime was detected and the dutiable articles discovered before he left the customs house, did not prevent the crime from having been consummated. Successful evasion of the payment of duties is not an essential element of the crime denounced by Section 593(a) of the Tariff Act. The doctrine announced in the case of *Keck* v. *United States*, 172 U. S. 434, is not applicable as the cases are readily distinguishable on the facts.

ARGUMENT

The Circuit Court of Appeals reversed the judgment of conviction on the supposed authority of *Keck* v. *United States*, 172 U. S. 434. In that case the Court considered Section 2865 of the Revised Statutes, which read as follows:

> If any person shall knowingly and willfully, with intent to defraud the revenue of the United States, smuggle, or clandestinely introduce, into the United States any goods, wares, or merchandise, subject to duty by law, and which should have been invoiced,

> *without paying or accounting for the duty*, or shall make out or pass, or attempt to pass, through the customhouse any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court. (Italics ours.)

The clause "without paying or accounting for the duty," contained in the statute considered in the *Keck case* was, subsequent to the decision in that case omitted in the reenactment of the statute by Section 593 (a) of the Tariff Act of 1922.

In the *Keck case* it appeared that Keck had given to the master of a vessel at Antwerp a small package, which he said did not contain any valuables, with the request that the captain, whose vessel plied between Liverpool and Philadelphia, take the package to the United States and on arrival there send the package to one Van Reeth at an address in Cincinnati. Just as the vessel was coming into the dock at Philadelphia she was boarded by a customs officer, who went to the captain and asked him if he had a package for the Coeterman Diamond Company. The captain said that he had no such package, but that he had a package for a man named Van Reeth. While at first the captain did not know that he was dealing with a customs official and supposed that he was some agent of the

owner of the package, he made no false statements to the customs official, he produced the package, and on request delivered it to the customs official.

The *Keck case* was argued twice, was affirmed by a divided court, and thereafter restored to the docket and submitted, was again restored to the docket and reargued, and the conviction reversed, four Justices dissenting. Emphasis is laid in the opinion on the clause "without paying or accounting for the duty" in the statute then under consideration, and which is not found in the statute here involved; but beyond that the cases are distinguishable on the facts.

Stress is laid in that case on the fact that the goods "before or at the time when the obligation to pay the duty arose, were surrendered to the customs authorities" and on the fact that the antecedent acts outside of the country preparatory to the commission of the overt act of smuggling "were not followed by the introduction of the goods into the United States" (p. 443.) It is evident that the basis of the decision in the *Keck case* was that the mere bringing of the merchandise past the three-mile limit, and therefore technically within territorial waters, did not constitute smuggling, for the very moment occasion arose to surrender the merchandise for inspection and declare it the goods were produced and declared. The case at bar is quite different. In order to procure the introduction of the diamonds into the United States in his personal baggage in such a way as

to not only escape the duty but escape further inspection and the necessity for a formal declaration and invoice, Ritterman falsely declared to the customs officer at Montreal that his baggage contained no dutiable merchandise. After he crossed the boundary line he repeated to the customs officers on the train that he had no dutiable merchandise, and, finally, at the first port of entry, St. Albans, when questioned at the customs house he reiterated that he had no dutiable merchandise and particularly stated that he had left his diamonds at Montreal. By that time he had certainly reached the point where he was required to declare dutiable merchandise and invoice it, and pay the duty thereon. He did not "surrender" the merchandise to the customs officer, as was done in the *Keck case*. Ritterman's baggage containing the gems was seized by customs officers and taken from the train to the customs house at St. Albans without the assent of Ritterman, and evidently without his knowledge prior to the time he was asked for the key. Unlike the master of the vessel in the *Keck case*, Ritterman on reaching a point where declaration and payment of duty were required persisted in his efforts to escape the duty and deceive the customs officers. Under such circumstances it is not necessary that the customs officers shall pretend to believe the false statements and allow the suspected individual to leave the customs office with his baggage in order that the crime of smuggling be consummated, and we see no reason to

believe that there was any intent in the *Keck case* to hold that under circumstances such as are found here confession by the smuggler subsequently to or simultaneously with the discovery of the dutiable merchandise leaves him immune from punishment for smuggling.

It is believed that the case at bar falls more nearly within the facts of the case of *Newman* v. *United States*, 276 Fed. 798. In that case Newman, a passenger of the steamship *Stavangerford*, arrived in Brooklyn in February, 1920, and left the ship for the pier. An inspector of customs had Newman's baggage declaration and on the pier asked him if he had declared everything he had purchased or obtained abroad. Newman said he had declared everything. Later a customs inspector said to Newman, "I am going to give you one more chance. If you have anything on your person, or anything you bought abroad, and have not declared it, now is your time to declare it. I want to give you every chance in the world to make a declaration." To which Newman responded, "I have declared everything. Go ahead and search me, if you want to." The inspectors then accompanied Newman back aboard the ship, entered his cabin and searched him. Two fountain pens were removed from one of Newman's pockets. Noticing that the pen rattled the inspector asked Newman what was in the pen, to which he responded "Perhaps a couple of pieces of broken pen. It was

out of order for a couple of months," whereupon the inspector broke the pen and disclosed seven diamonds. Another pen was found on his person containing four diamonds. Finally after further pressing, the defendant Newman, took a box of tooth paste from his handbag, squeezed the tube and two more diamonds came out with the paste. The Circuit Court of Appeals in that case said (p. 800):

> * * * at a time when the customs officers not only had before them a false declaration, but in addition had physical possession of part of the smuggled goods, was it requisite that they should wait until the smuggler left the customs inclosure before they could apprehend him, on the theory that the crime was only then committed? Such a construction would make a mockery of the statute, and render it in large measure useless. In this case there was not an unexecuted purpose, nor a mere attempt to smuggle, as in the *Keck case*, supra. On the contrary, there is no similarity between the facts of that case and of this. Here the smuggling had been so fully executed that all that was left for Newman to do was to escape detection.

Petition for certiorari in the *Newman case, supra*, was denied by this Court (*Newman* v. *United States*, 258 U. S. 623), and this while the words "without paying or accounting for the duty" remained in the statute.

The decision in the *Keck case* was also influenced to some extent by the fact that at common law in England the offense of smuggling involved "landing" the goods and not merely bringing them inside the three-mile limit, and in the *Keck case* the diamonds had not been landed. In the *Keck case* no act or word of concealment or evasion of duty or failure to comply with law or regulations for one moment occurred after the vessel entered territorial waters.

The detection in this case took place after the crime had been consummated and not while it was a mere attempt. If smugglers clandestinely land merchandise at an isolated point on the coast with intention to evade the duty, their crime is consummated, notwithstanding customs officers observe them and arrest them and seize their goods before they have proceeded inland; and if suspected smugglers are found landing at an isolated point on the coast and customs officers observe them and require them to proceed to a customhouse near by for examination and inspection and the smugglers persist at the customhouse in denying possession of dutiable merchandise, subsequent search and detection of their possession of dutiable merchandise does not anticipate the consummation of the offense of smuggling. The case supposed differs in no essential from the case at bar. Ritterman was not headed for the customhouse. He had done his business with the customs officials at Montreal.

He was comfortably established in a train headed for New York, and his baggage containing the gems was on the train checked to New York, and, by virtue of the procedure theretofore taken under regulation 224, had been released from the necessity of further inspection. The removal of Ritterman and his baggage from the train to the customhouse was in effect compulsory. The crime here was detected, but it was nevertheless committed. The judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

WILLIAM D. MITCHELL,
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J. KENNEDY WHITE,
Attorney.
HARRY B. AMEY,
United States Attorney for Vermont.

DECEMBER, 1926.

APPENDIX

TREASURY DEPARTMENT
Customs Form 6059
ART. 295, C. R. 1923
T. D. 34125

UNITED STATES CUSTOMS SERVICE

DECLARATION AND ENTRY OF PERSONAL, HOUSEHOLD, IMMIGRANT, AND THEATRICAL EFFECTS, BOOKS, TOOLS OF TRADE, EFFECTS OF PROFESSIONAL LECTURERS, ETC.

No. . . . . , 192

District No. . . . . . , *Port* . . . . . , 192

I, the undersigned, declare that . . . . . and . . . . . his immediate
(Name) (Husband, wife, and minor children only)
family, are residents of the country of . . . . . and reside at . . . . .
(Number) (Street) (City) (State)
citizens of the country of . . . . . that said person or persons arrived on the . . . . . from
(Vessel or carrier)
. . . . . on . . . . . , 192 ; that the following . . . . . , owned by the
(Personal, household or immigrant effects, tools of trade, etc.)
above named, accompanied him or them *or arrived on the* . . . . . at . . . . . on . . . . . , 192 ; that I or we left the United States at . . . . . on . . . . . , 192 .

Packages, trunks, bags, etc.	DESCRIPTION OF ARTICLES CONTAINED HEREIN. List separately articles brought in for sale, for delivery to other persons, and United States articles altered or repaired abroad	Price paid or foreign market value	TOTAL DUTIES PER USE OF CUSTOMS OFFICERS. Quantities	Rate	Duty
	Articles obtained abroad for use of above-named persons				
	Articles for sale or use of other persons				
	Articles altered or repaired abroad	Cost of repairs			
	Personal effects taken out of U. S.				
No.	Total number of packages		Total duty		$

I further declare that all of the statements in this entry are true and complete; that all articles obtained abroad and brought or caused to be brought into the United States on said carrier by the above-mentioned persons are fully set forth above, and, with the exception of the articles listed otherwise, are for the sole use or wear of said persons, and were in the possession and use of said persons while abroad, and at the time of departure for the United States, and are necessary and appropriate for the wear or use of said persons; or for emigration to the United States, and are not to be sold, exchanged, or used in any manufacturing establishment, or otherwise used or disposed of in violation of the conditions permitting free entry; that such articles as are household effects were used abroad by said persons for not less than one year; that such articles as were taken from the United States and returned are in the same condition as when taken out, except such as were altered or repaired abroad, the cost of which alteration or repair is truly stated; and that the values stated on all articles obtained abroad represent the prices paid if purchased, otherwise the wholesale foreign market value as defined by law. I further declare, if declaration is made by me as an immigrant, that I intend to become a resident of the United States. I further declare, if this declaration is executed by me as agent, that all of the statements contained therein are correct and true to the best of my knowledge, information, and belief.

SF

_____
(Signature of owner, agent, or both)

Capacity _____ _____
(Owner or agent)

Declared to under oath before me this _____ day of _____, 192

_____
Acting Deputy Collector or Notary Public.

Articles for personal or household use and souvenirs or curios to the value of $100 may be brought in free of duty by returning residents of the United States, but must be declared. If this declaration, executed by the owner, is not produced at time of entry, bond on customs Form 7551 must be given for its production within three months from date of entry, and copy should be sent immediately to the owner for oath and signature. If value exceeds $100, consular invoice is required, except in case of personal effects accompanying the passenger.

This form may be used as a proforma invoice and manifest when necessary